

EXHIBIT 5

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

DEANTHONY THOMAS, et al.,

Plaintiffs-Appellants,

v.

Case No. 08-3302

US BANK NATIONAL ASSOCIATION, et al.,

Defendants-Appellees.

**FEDERAL DEPOSIT INSURANCE CORPORATION'S MOTION FOR
SUBSTITUTION OF PARTY**

Pursuant to Federal Rule of Appellate Procedure 27(a), the Federal Deposit Insurance Corporation ("FDIC"), as Receiver for Defendant-Appellee PFF Bank & Trust ("PFF Bank") hereby files this Motion of Substitution of Party. For the reasons set forth below, this motion should be granted.

1. Federal Rule of Appellate Procedure 43(b) provides: "If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies." Fed. R. App. P. 43(b).

2. Substitution is appropriate under Rule 43(b) when "the party for whom substitution is sought . . . is incapable of continuing with the litigation. One such instance is where a party transfers its interest in the company or property involved in the suit." *See Maier v. Lucent Technologies, Inc.*, 120 F.3d 730, 732 n.1 (7th Cir. 1997).

3. On or about November 21, 2008, the U.S. Treasury Department's Office of Thrift Supervision ("OTS") declared PFF Bank unsafe and unsound and appointed the Federal Deposit Insurance Corporation ("FDIC") as Receiver for PFF Bank.

4. As Receiver, FDIC succeeded to all rights, titles, powers and privileges of PFF Bank, including the power to operate the institution and perform all functions of the

institution in the name of the institution, and shall pay all valid obligations of the insured depository institution. 12 U.S.C. § 1821(d)(2).

5. Attached hereto are true and correct copies of OTS's Receivership of a Federal Savings Association (attached as Exhibit A), OTS's letters appointing the FDIC as Receiver of PFF Bank (attached as Exhibit B), and FDIC's Acceptances of Appointment as Receiver (attached as Exhibit C).

6. Accordingly, the FDIC as Receiver of PFF Bank should be substituted in as the real party in interest.

7. Pursuant to Rule 27B(a)(9) of the Rules of Appellate Procedure for the United States Court of Appeals for the Eighth Circuit, the Clerk has the discretion to enter this procedural order on behalf of the Court.

WHEREFORE, for the reasons set forth above, the FDIC as Receiver of PFF Bank respectfully requests that the Court grant the motion substituting FDIC as Receiver of PFF Bank for PFF Bank in this action.

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

By: /s/ Gregory T. Wolf
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ON BEHALF OF FDIC AS RECEIVER OF
DEFENDANT-APPELLEE PFF BANK &
TRUST

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Gregory T. Wolf
On behalf of FDIC as Receiver of Defendant-
Appellee PFF Bank & Trust